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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (s) No. 2232 of 2005

Applicant	:	Rajesh Kumar Dhurve, Aged 24 years about S/o Shri F.S. Dhurve Occupation A.S.I. (M.) In the office of Superintendent of Police, Rajnandgaon (M.P.) (Now C.G.)

Versus

Respondents	:1.	The State of Madhya Pradesh Through the Principal Secretary, Home (Police) Department Madhya Pradesh Mantralaya, Bhopal
	2.	Superintendent of Police, Rajnandgaon.
	3.	Asstt. Inspector General of Police (Selection) Police head Quarters, Bhopal.
	4.	Director General of Police, Madhya Pradesh, Jehangirabad, Bhopal.

SB : Hon'ble Justice Shri Satish K. Agnihotri

Present: Mr. Abhay Tiwari, counsel for the petitioner.
Mr. Anju Ahuja, Dy. Govt. Advocate for the respondents/State.

ORDER

(Passed on this 9th day of April, 2007)

1. Learned counsel appearing for the petitioner submits that the petitioner was appointed on temporary basis by the Superintendent of Police, District Rajnandgaon vide order dated 5.12.88 (A/2) on the post of Assistant Sub-Inspector (Ministerial Cadre). It was clearly specified in the appointment order that the appointment of the petitioner was purely temporary and the same could be terminated with one month's notice in advance. The services of the petitioner was terminated vide order dated 25.5.99 (A/1) as 'no longer required' with one month's notice.

2. Being aggrieved, the petitioner has filed this petition for quashing the termination notice dated 25.5.99 (A/1) for discontinuing of his service

as 'no longer required' after completion of one month's period on the ground that the same being discriminatory and violative of Articles 14 and 16 of the Constitution.

3. Admittedly, the appointment of the petitioner was on temporary basis with the specified condition that the same could be terminated with one month's notice in advance. One month's notice in advance was issued on 25.5.99 for termination of his service as 'no longer required'. The order of termination is in consonance with the order of the appointment. Even otherwise, it is trite law that any appointment made on temporary basis dehors the constitutional scheme of employment is not legal. Thus, the employee so appointed has no right to reinstatement, continuation or regularization in service.

4. A constitutional Bench of the Supreme Court in the case of ***Secretary, State of Karnataka and others Vs. Umadevi (3) and others***[1] has observed as under:-

> *"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.* If the court were to void a contractual employment of this nature on the ground

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that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (*sic*) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution."

5. In view of the foregoing, this petition stands dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1. (2006) 4 SCC 1

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